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AUTHOR Satcher, Jamie F.; Dooley-Dickey, Katherine
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ABSTRACT

This paper provides a basic overview of the employment provisions of the Americans with Disabilities Act of 1990 (ADA), which mandates equal access, protection, and opportunity for persons with disabilities in four major areas: employment, telecommunication, transportation, and public services and accommodations. It notes that the employment provisions of ADA require that the hiring and employment policies of employers with more than 25 employees be nondiscriminatory, and that employers provide reasonable accommodation to the known limitations of a qualified person with a disability. It is suggested that, in view of the widespread changes in hiring and employment practices likely to result from ADA, rehabilitation counselors may be called upon to play several roles in helping employers to comply with this legislation, including: (1) understanding a job applicant's functional limitations; (2) determining the reasonable accommodations that may be used with a particular job applicant; (3) identifying incentive programs to help employers with the costs of providing accommodation; and (4) identifying a pool of potential job applicants with disabilities. Possible implications resulting from enactment of the ADA for employers, rehabilitation professionals, and persons with disabilities are suggested, and references are included. (TE)

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THE AMERICANS WITH DISABILITIES ACT OF 1990: IMPLICATIONS
FOR REHABILITATION COUNSELORS, EMPLOYERS, AND
PERSONS WITH DISABILITIES

by

Jamie Satcher, Ph.D., Asst. Project Coordinator

and

Katherine Dooley-Dickey, Ph.D., Asst. Professor

Department of Counselor Education

Mississippi State University

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Association's Eighth Annual Professional Development
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Abstract

This paper presents a basic overview of the employment provisions of the Americans with Disabilities Act of 1990 (ADA). The role of the rehabilitation counselor in helping to implement this legislation is discussed. Possible implications resulting from enactment of the ADA for employers, rehabilitation professionals, and persons with disabilities are suggested.

THE AMERICANS WITH DISABILITIES ACT OF 1990: POTENTIAL
IMPLICATIONS FOR REHABILITATION COUNSELORS,
EMPLOYERS, AND PERSONS WITH DISABILITIES

In the United States, persons with disabilities face greater unemployment than do persons who are nondisabled. For example, the Bureau of the Census (1987) reported that 59.4% of the working-age (16 to 65) nondisabled population were in full-time employment, whereas only 19.7% of persons with disabilities in the same age category were working. In a national survey of persons with disabilities, Harris and Associates (1986) found that over 66% of the respondents to their survey wanted to work but were unable to locate employment. Clearly, persons with disabilities are not being afforded employment opportunities comparable with nondisabled persons.

The substantial unemployment of persons with disabilities presents major economic costs to American society. The President's Committee on Employment of the Handicapped (1986) reported that over \$62 billion dollars were spent in 1985 to support persons with disabilities. The majority of these funds (93%) were spent on persons with disabilities who were either unemployed or not in the labor force.

Advocacy efforts by persons with disabilities have focused attention on the need to strengthen legislation to integrate persons with disabilities into the mainstream of American society (Fine & Asch, 1988). Furthermore, a demographically changing workforce and shrinking number of available workers has emphasized the need to integrate persons with disabilities into the labor market. As the labor pool shrinks, employers will be forced to consider hiring persons who may have previously been given little consideration, including persons with disabilities (Dean, 1988; Feldman, 1988; Howard, 1989; Modic, 1988).

According to Lindroth (1982), in the future, the employment of persons with disabilities will be a necessity, rather than a question of affirmative action. However, persons with disabilities will not be able to take advantage of increased employment opportunities unless discriminatory attitudes and policies regarding them are changed (Roessler, 1987).

The Americans with Disabilities Act of 1990 (ADA), P.L. 101-336, has grown out of a growing awareness of the need to strengthen legislation that protects persons with disabilities from discrimination. This legislation reflects recommendations of the National Council on the Handicapped (1986) for Congress to provide equal opportunities in society for persons with disabilities and protects persons

with disabilities in four major areas: (a) employment, (b) telecommunications, (c) transportation, and (d) public services and accommodations (Rovner, 1990).

The employment provisions of the ADA become effective in July, 1992 for employers having more than 25 employees and in July, 1994 for employers having more than 15 employees. The ADA requires that covered employers provide reasonable accommodation to the known limitations of a qualified person with a disability. Furthermore, employers must ensure that their hiring and employment policies and practices are nondiscriminatory. The ADA also requires: (a) that public and private providers of public transportation ensure that their services and facilities are accessible to persons with disabilities, (b) that telecommunications services be available for persons who must use telecommunications devices for the deaf (TDD's), and (c) that public services and accommodations, such as restaurants, shopping centers, and business offices, be accessible to persons who have disabilities.

Although all of the areas of the ADA are designed to assist persons with disabilities to live in a less restrictive environment, the area of this legislation which is probably of the most interest to vocational rehabilitation professionals is the employment area. In

addition to mandating nondiscrimination against persons with disabilities in private-sector employment, the ADA:

1. Provides employers a broad definition of disability to include not only persons who have mental or physical disabilities, but also persons who have a history of disability or who are regarded as having a disability;
2. Provides specific examples of what constitutes job discrimination against qualified persons with disabilities, such as using tests or other selection criteria which may screen out persons with disabilities;
3. Defines a qualified person with a disability as someone with a disability who could perform the essential functions of a job with or without reasonable accommodation;
4. Provides specific examples of reasonable accommodation, including such accommodations as job-restructuring, part-time work, or the provision of readers or interpreters;
5. Provides protection from employment discrimination for persons who are related to or closely associated with someone who has a disability;

6. Provides general guidelines for determining if an accommodation constitutes an undue hardship for the employer. If so, then the accommodation would not be considered reasonable;
7. Prohibits the use of pre-employment medical examinations; and,
8. Excludes from legal protection persons who are current users of illegal drugs or alcohol.

The ADA will likely result in widespread changes in employers' hiring and employment practices. Rehabilitation counselors may be called upon to play several roles in helping the employment community to comply with this legislation.

Roles of the Rehabilitation Counselor

One role of the rehabilitation counselor will be to serve as a resource person for employers to assist them in (a) understanding the functional limitations associated with a job applicant's disability, (b) determining the reasonable accommodations that may be used with a particular job applicant, (c) identifying incentive programs to help employers with the costs of providing accommodation, and (d) identifying a pool of potential job applicants who have disabilities. Rehabilitation counselors and rehabilitation

agencies can market their expertise in these areas to employers through personal contacts with employers, public awareness campaigns, and direct-marketing techniques, such as brochures mailed to employers.

Although the ADA grants persons with disabilities legal protection from discrimination in the employment arena, persons with disabilities may not achieve equal-employment opportunity unless they are able to advocate for themselves. The ADA places the onus of responsibility on the person with a disability to make known to the employer both the disabling condition and the limitations associated with it. Rehabilitation counselors will need to help their clients (a) to become comfortable discussing their disabilities and accompanying limitations, (b) to articulate accommodation needs to potential employers, and (c) to identify themselves as having disabilities if their disabilities are hidden, such as learning disabilities, so that legal protection will be afforded. When working with clients whose impairments are so severe that self-advocacy will be substantially limited, then rehabilitation counselors must be able to advocate for their clients by seeking job placements for which they are qualified and by working closely with employers to identify and provide needed accommodations.

Potential Implications

The Americans with Disabilities Act has many potential implications for the employment community, rehabilitation professionals, and persons with disabilities.

Employers

The ADA has met with a great deal of resistance in the business community (Mandel, 1989). Satcher and Hendren (1990) surveyed a group of employers and found that the employers surveyed were significantly less accepting of the employment area of this legislation than they were of any of the other areas addressed by the ADA. One implication of the ADA is that considerable effort will need to be placed on developing training programs and materials to assist employers to understand the employment provisions of this legislation and how they may comply with its requirements. Other possible implications include:

1. Employers will need to ensure that they have accurate and complete job descriptions which specify only the essential functions of jobs available in their businesses. There will likely be an increased emphasis on job and task analysis as methods of developing accurate job descriptions;

2. Employers will need to carefully determine whether their screening criteria may discriminate against persons with disabilities and discontinue discriminatory job screening practices;
3. Employers will need to learn how to access information about reasonable accommodation and develop resources for identifying state of the art rehabilitation technology, possibly through linkages with state and private rehabilitation agencies;
4. Large employers may need to hire rehabilitation personnel whose specific function will be to monitor compliance with the ADA and to serve as resource persons for facilitating hiring, and maintaining in employment, workers with disabilities; and,
5. In order to show justification of why a nondisabled job applicant was selected over a qualified applicant with a disability, all covered employers must have consistent documentation of their hiring decisions, to include the normal procedures they follow when choosing between two or more equally qualified applicants.

Rehabilitation Professionals

Implementation of the ADA will likely bring about a number of changes in how public and private rehabilitation

agencies serve persons with disabilities. Possible implications include:

1. A broadening of eligibility criteria for vocational rehabilitation assistance to include persons who have a history of disability and those who are regarded as disabled, rather than only those who have a documented physical or mental impairment;
2. An increased emphasis on documentation of the functional limitations associated with a disability, written in behavioral and observable terms (to show how the disability limits employability and to determine needed accommodations to allow the individual to perform specific jobs);
3. An emphasis on the use of assessment techniques and instruments that have proven content validity. Any assessment techniques and instruments chosen must have content validity for the essential functions of the job in question. If assessment techniques and tools tend to screen out persons with disabilities from specific jobs, then rehabilitation professionals may be asked to demonstrate how the tasks included in these instruments are related to the specific job tasks.

4. An increased use of job and task analysis as placement tools. As rehabilitation counselors and placement specialists plan for employment with clients with disabilities, they must be able to document that their clients are otherwise qualified for targeted jobs. This will likely mean that having detailed knowledge of specific jobs and the specific characteristics of the client which qualifies him or her to work in that job will be needed prior to placement activity;
5. New job opportunities may become available for rehabilitation professionals within the business community. Their expertise will be needed to assist employers to comply with the ADA. Large employers may hire rehabilitation professionals as part of Employee Assistance Programs.
6. Increased attention to professional expertise as demonstrated by the Certified Rehabilitation Counselor (CRC) credential and professional licensure. Rehabilitation agencies will need to ensure that their personnel have training commensurate with the demands of the profession;

7. Increased opportunities for business/rehabilitation agency networking to meet the needs of persons with disabilities.

Persons with Disabilities

The ADA is an empowering piece of legislation for persons with disabilities. Possible implications for persons with disabilities include:

1. An increased need to self-advocate: To work with agencies and businesses covered by the ADA to assist them to voluntarily comply with the legislation.
2. Because the ADA requires employers to provide reasonable accommodation for the known limitations of an individual's disability, persons with disabilities will need to be willing to self-disclose hidden handicaps to employers and to identify and ask for accommodations needed in the workplace.
3. Because the ADA will likely be enforceable only to the extent that persons with disabilities actively seek compliance, persons with disabilities will need to be willing to take legal action against entities covered by the ADA to ensure compliance.

Conclusion

The Americans with Disabilities Act of 1990 promises unprecedented opportunities for persons with disabilities to participate more fully in American society. Hopefully, the transition period following enactment of the provisions of this legislation will be marked by a commitment from rehabilitation professionals, employers, and persons with disabilities, and all other entities covered by the ADA to cooperatively facilitate voluntary compliance.

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